

**INSTRUCTIONS FOR APPLICATIONS FOR DISTRIBUTION FROM THE
PRIVACY AND PIRACY FUND
Disbursement Cycle For Year 2010-2011**

On December 7, 2006, the Santa Clara County Superior Court ("Court"), in entering the Final Judgment and Permanent Injunction ("Judgment") in the case of *People v. Hewlett-Packard Company*, Case No. 106CV-076081, established the Privacy and Piracy Fund ("Privacy and Piracy Fund" or "Fund"). The terms of the Fund are set forth in the Judgment at pages 8-10.

As established by the Judgment, the Privacy and Piracy Fund, is administered by the California Attorney General's Office. The Fund is established to give "authorized prosecutors" access to additional funds so that they can more effectively conduct investigations and bring prosecutions to protect the public's privacy rights and/or intellectual property rights. The maximum total amount of money that can be disbursed to all applicants in any given year is limited to \$500,000.

"Authorized prosecutors," as defined in Paragraph G(2) at page 9 of the Judgment, may apply for disbursements from the Fund pursuant to the procedures set forth below. Applications for disbursements from the Fund are reviewed by a three-person committee ("Committee") within the California Attorney General's Office, pursuant to Paragraph G(6) at page 10 of the Judgment. The California Attorney General will make final decisions regarding which applications are funded. Applicants should submit four copies of the applications to the Privacy and Piracy Fund Committee ("Committee") (c/o Supervising Deputy Attorney General Catherine Z. Ysrael at the address below).

1. Schedule for Applications and Distributions

Applications for the 2010-2011 Distribution Cycle will be **accepted starting May 24, 2010, and must be postmarked by June 25, 2010, to be considered in the first round of disbursements.** (A Disbursement Cycle is defined as the fiscal year in which disbursements are made (e.g., July 1, 2010 - June 30, 2011).) In order to be considered, all applications and attached documents (four copies of each) are to be mailed, postmarked not later than June 25, 2010, to:

Privacy and Piracy Fund Committee
Attention: Catherine Z. Ysrael
Supervising Deputy Attorney General
California Office of the Attorney General
110 West A Street, Suite 1100
San Diego, California 92101

Applications must be submitted by U.S. or overnight mail. Applications sent by messenger must be received by June 25, 2010. E-mail or facsimile applications will not be accepted. In addition to the information requested in the Application form, applications should be limited to five pages in length. Supporting documentation is permitted. The Attorney General's Office will consider applications and supporting documents to be confidential law enforcement communications.

Applicants will be notified regarding whether their application was accepted for funding approximately August 13, 2010. Funds for the first round of disbursements will be disbursed after August 31, 2010. At the discretion of the Committee, additional applications may be solicited after the August 13, 2010, notification date, if the amount approved for distribution to applicants does not exceed \$500,000 for the 2010-2011 Disbursement Cycle.

The Committee will provide notice to all applicants, via CPIN or other methods, if it extends the deadline for accepting applications and will otherwise utilize CPIN or other methods to communicate with applicants. If the Committee solicits applications after the August 13, 2010, notification date, applications will be reviewed on an as-received basis. The Committee will notify potential applicants if and/or when it closes the application process, if it decides to extend the application acceptance date after the August 13, 2010, notification date. Even if the Committee decides to solicit applications after the August 13, 2010, notification date, no applications will be accepted for review between June 25, 2010 (unless postmarked before June 25th), and the date that the Committee notifies potential applicants that additional applications are being solicited. Any application received during this time period will be returned.

During the review process, the Committee may contact applicants with any questions regarding the applications. It is possible that a project will be awarded a disbursement in lesser amounts than requested in the application, or that the Committee may request modifications prior to accepting an application as a disbursement recipient.

Application procedures may be modified from year to year as needed. All potential applicants will be notified of the application procedures and applicable deadlines annually or more often as needed, via CPIN or other methods.

2. Distribution from the Privacy and Piracy Fund Account: Purpose and Scope

a. Purpose

Monies distributed from the Fund to authorized prosecutors pursuant to Paragraph G(5) of the Judgment shall be expended solely and exclusively for use by authorized prosecutors to facilitate the investigation and prosecution of both civil and criminal violations of the public's privacy rights and/or violations of intellectual property rights. An "authorized prosecutor" refers to any district attorney, any city attorney, and any city and county attorney authorized to prosecute violations of California Business and Professions Code section 17200 et seq., as set forth in California Business and Professions Code section 17206.

The Committee will consider requests for distribution that will be used to further consumer protection in the areas of identity theft, computer-related activities that adversely impact privacy and intellectual property rights, theft of trade secrets, and other types of requests dealing with the issues of privacy and piracy, as well as training of investigators and staff in combating these issues. The above examples are not meant to be exclusive. The Committee will consider any application for a program or project that serves the purpose of investigating and prosecuting violations of the public's privacy rights and/or violations of intellectual property rights.

Applications can request funds to help with the payment of costs and expenses incurred by multi-agency consumer protection efforts, as well as the costs of experts, consultants, investigators, auditors, and equipment the applicant needs, but does not currently possess, to make the proposed project a success.

Distributions may be used to augment, but not supplant, the budget of the disbursement recipient. As part of the application, an applicant must represent that the budget of the applicant will not be reduced by reason of approval of the application.

b. Staff Expenses Rarely Funded

The Committee assumes applicants will devote the staff needed to make the application-project succeed. Disbursements from the Privacy and Piracy Fund are for materials, outside experts, and the like. Because the distribution is yearly, there is no guarantee that the same applicant will receive a disbursement in successive years and so, as a general matter, these disbursements are not intended to pay for new staff. **Absent extraordinary circumstances**, funds may not be used to pay for already existing staff salary, benefits, or other compensation. An application that fails to demonstrate clearly the availability of sufficient staff to complete the proposed project without staff funding from the Privacy and Piracy Fund will likely be denied.

Recognizing that there is no guarantee of future money, an application can be made to fund or partially fund, for the term of the Disbursement Cycle, new project-specific positions such as forensic consultants or experts hired as independent contractors, or for limited term positions, such as investigators or auditors, needed to commence an investigation or prosecution. If some of the disbursement is used to partially fund payment for a consultant or expert, with the remainder of the money to come from a different source, applicants are reminded that there is no guarantee that the disbursements will continue in subsequent years (and in fact, except under extraordinary circumstances as described in Section 4 below, the maximum number of years for which a project may receive disbursement funds in a single application is three years).

c. Factors that May be Considered by the Committee

In addition to those considerations described above, in making decisions regarding which applications to fund, the Committee may consider the following factors and others which may be relevant to the specific application:

- (1) the intended purpose of the project for which funds are sought;
- (2) the specificity of the proposal, including the use of funds, expected costs and expenses, materials and personnel to be used, the services or goods to be provided through the project (in addition, if the application is for a video, brochure, or instruction unit, it is extremely helpful for the applicant to provide a draft of the text or a detailed description of the contents). *Please note that an application may be denied based solely on the lack of specificity, including the absence of a sufficiently detailed itemization of expenses as requested in Section III (F) of the application form;*

- (3) competing requests for funding;
- (4) the anticipated public benefit to be served by approving the project;
- (5) the ability of the Committee to audit the use of the disbursement funds to ensure that the funds are used solely for purposes authorized hereunder;
- (6) the number and amount of previous disbursements made to a particular recipient and the use of previous disbursements in accordance with the terms of the Judgment;
- (7) the ability of the applicant to provide the Committee with a report regarding the actual results obtained as a result of any project funded with disbursements;
- (8) the extent to which the proposed project will likely provide significant benefits to consumers and/or piracy victims generally;
- (9) the likelihood for the production of high quality materials that may be replicated and used by the applicant and others after the term of the project has expired; and
- (10) the extent to which the recipient proposes to use disbursement monies for expenses involving staff, travel and lodging, food and refreshments, etc.

3. Conditions on Disbursements

Each applicant must agree in writing, as part of the application, to the following if chosen as a disbursement recipient:

- a. The recipient will comply with each and every order of the Court in connection with the Privacy and Piracy Fund and the disbursement received;
- b. The recipient will vigilantly safeguard the monies disbursed hereunder and maintain financial controls sufficient to protect such monies and ensure that the use of monies fully comports with the recipient's application for the disbursement, and provide detailed written description of such financial controls upon request by the Committee;
- c. The funding requested will not be used to pay for regular staff of the agency or entity applying for this project;
- d. The person submitting the application represents that his/her office is authorized to accept funds under applicable state and local laws and that the budget of the applicant's office/unit will not be reduced by the receipt of disbursement funds. Disbursement funds shall be used to augment but not supplant the budget of the disbursement recipient;

- e. Except as otherwise expressly agreed by the Committee in writing, the funds will only be used for the purposes described in this application, as approved or modified by the Committee;
- f. If the project is for the purpose of investigation or litigation, any civil settlement the recipient enters will provide for full reimbursement of the amount of the disbursement to the Privacy and Piracy Fund. The Fund shall be reimbursed before any settlement funds are used for any other purpose;
- g. In the event a disbursement recipient is the prevailing party after trial, the recipient will use its best efforts to reimburse the Privacy and Piracy Fund in full from any monetary recovery ordered by trial and appellate courts and paid by the defendant(s);
- h. A disbursement recipient will notify the Committee in writing of litigation results, including any settlement, judgment or other resolution, within 30 days of such settlement, judgment or other resolution;
- i. All correspondence with the Committee shall be directed to Supervising Deputy Attorney General Catherine Z. Ysrael, Office of the California Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101, phone: (619) 645-3182, fax: (619) 645-2062, e-mail: Catherine.Ysrael@doj.ca.gov ;
- j. A disbursement recipient will notify the Committee in writing of the status of all outstanding litigation or investigations related to this disbursement application six months after the funds are disbursed to the recipient and then every 12 months on the anniversary date of the disbursement;
- k. A disbursement recipient will cooperate with the Committee and its agents in providing all information and documents concerning the use of funds as the Committee reasonably requests and will maintain sufficient records for auditing purposes to substantiate any expenditure. In the event of a multi-agency project, the initial disbursement applicant shall be solely responsible for complying with this paragraph, except as otherwise expressly agreed by the Committee in writing;
- l. A disbursement recipient will comply with all additional requirements the Committee imposes, including but not limited to completing and promptly returning the JUS 8765 form to acknowledge selection as a disbursement recipient;
- m. Approval of this application does not constitute Committee or California Attorney General endorsement of the applicant's project;

- n. Except as otherwise expressly agreed by the Committee in writing, within 60 days after the conclusion of the investigation, litigation, or training for which the disbursement was requested, the recipient must return unused or excess funds to the Committee by check made payable to the California Attorney General's Office, with the notation "Privacy and Piracy Fund Reimbursement;"
- o. If the project is for the purchase of non-case specific goods or services, any excess or unused funds must be returned to the Committee within 60 days after purchase of such goods or services by check made payable to the California Attorney General's Office, with the notation "Privacy and Piracy Fund Reimbursement;"
- p. If an application is for the production of any materials, the Applicant agrees to permit the California Attorney General's Office and other authorized prosecutors to use those materials, without restriction, for their intended purposes, if the Committee so requests; and
- q. Disbursement recipients must submit a self-evaluation report within six months after receipt of funds, and a final report to the Committee within 60 days of completing the project for which the disbursement was awarded. These reports shall specify how disbursement funds were used. Multi-year recipients must also provide yearly progress reports, after the initial report, as described in Section 7 below. All reports submitted to the Committee pursuant to the reporting requirements of these instructions shall be treated by the Attorney General's Office as confidential law enforcement communications.

The Committee may designate, and require completion of, forms to satisfy these requirements. The Committee may attach additional written conditions to the award of any disbursements from the Privacy and Piracy Fund.

The Committee will (except in extraordinary circumstances) condition funding an application for the production of any materials on the applicant's agreement to permit the California Attorney General's Office and other authorized prosecutors to use those materials, without restriction, for their intended purposes.

4. Amount and Timing of Distributions

Up to \$500,000 may be awarded to disbursement recipients in a Disbursement Cycle. While there is no restriction on the number of disbursements awarded or individual specific amounts awarded to a recipient from the \$500,000 allowable in a Disbursement Cycle, it is the Committee's intent that disbursements will be given to a number of projects so that experience and benefits can be gained learning which types of projects are most effective.

The Committee may decide to award less funding than requested by an applicant, in which case applicants shall have the opportunity to modify their budgets and project objectives accordingly, or decline to accept the disbursement.

Partial operating support may be awarded to existing projects depending on how well they fulfill the purpose and goals of the Fund, and the ability to access other sources of funding, now and in the future.

Distributions shall be made on an annual basis only, in a single lump sum. Disbursements for this Disbursement Cycle will be made after **August 31, 2010**.

Although the Committee anticipates that most disbursements will be for projects lasting one year or less, applicants may seek distribution for ongoing programs for consecutive or multiple years, not to exceed three years **in a single application**. Applicants for a multi-year project must provide a compelling reason and specific goals and objectives for each year requested. Multi-year recipients will be required to submit an annual progress report in each succeeding year of a multi-year project. If, in the opinion of the Committee, the annual progress report fails to demonstrate progress in the project and a continuing need for continued funding, the Committee reserves the right to revoke the disbursement and not provide funding for subsequent years of a multi-year project, and/or to reduce the amount of funding for subsequent years.

If a multi-year project is awarded, the Committee will consider awarding a follow-up application to continue the same project if the applicant submits a new supplemental application at the end of the multi-year disbursement period demonstrating a compelling need for future funding.

Successful applicants will not automatically receive the amount of funding requested in the application. The Committee reserves the right to review and reduce requested budget amounts prior to the final disbursement award, as well as to request modifications to the application-project as a condition of accepting the proposal.

Applicants are limited to one application per Disbursement Cycle (e.g., Disbursement Cycle 2010-2011). There is no prohibition against re-submitting the same application in a future cycle, if it has been denied in a previous cycle.

5. Distribution Decisions

Applications are to be submitted to the Privacy and Piracy Fund Committee within the California Attorney General's Office, which will consist of the Senior Assistant Attorney General of the Consumer Law Section, the Senior Assistant Attorney General of the Special Crimes Unit, and the Chief Assistant Attorney General of the Public Rights Division or his/her respective delegates. Only those applications that two-thirds of Committee approves will be submitted to the Attorney General for final approval. The Attorney General will select and notify disbursement recipients no later than August 13, 2010, and recipients will receive their disbursement after August 31, 2010.

6. Reimbursements and Contributions to the Fund

As noted above, the Committee will require applicants, as a condition of accepting any funds, to provide reimbursement of the disbursement amount from any settlement or recovery (as permitted by law), in keeping with the terms of the Judgment. Nothing in the Judgment or these instructions shall preclude a recipient from reimbursing the Fund with amounts greater than those originally received from the Fund, and an authorized prosecutor, regardless of whether a disbursement recipient, may provide contributions to the Fund. Additional funds may be donated or contributed to the Fund from any source, subject to approval by the Committee.

7. Auditing and Reporting

Disbursement recipients shall maintain accounting records and other evidence pertaining to costs incurred during the Disbursement Cycle and thereafter for three years from the date of the final payment of disbursement funds. The Committee must be permitted to audit, review and inspect the activities, books, documents, papers and records during the progress of the project and thereafter for three years following final allocation of funds.

Disbursement recipients will be required to submit self-evaluation reports to the Committee on the progress of their project six months after receiving disbursements, as well as a description of how disbursement funds were used. Multi-year recipients will also be required to submit an annual progress report in each succeeding year of a multi-year project. See Section 4 above for reporting requirements of multi-year project recipients.

Disbursement recipients must submit a final report to the Committee within 60 days of completing the project for which the disbursement was awarded. Such report shall specify how funds were used, as well as a description of the project's outcome.